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Supreme Court, U.S.
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No. 02-188

IN THE

Supreme Court of the United States

ADA COUNTY, State of Idaho, *et al.*,

Petitioners,

v.

ROBERT WEBB, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The question presented is whether attorney fees were properly awarded under the Prison Litigation Reform Act of 1995 ("PLRA"), 42 U.S.C. § 1997e(d)(1)(B)(ii), after the district court has made findings that the fees were directly and reasonably incurred in the enforcement of the relief, including court orders and a consent decree granted, for violations of the plaintiffs' rights.

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	ii
Table of Cited Authorities	iv
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	2
I. Petitioners' Arguments Were Not Raised Below And Are Without Merit.	2
II. Contrary To Petitioners' Argument, The District And Appellate Courts Conducted The Proper Analysis Of The Plra, 42 U.S.C. § 1997e(d)(1), And This Case Does Not Conflict With Any Decision Of This Court Or Other Circuits.	3
A. Petitioners' Argument Depends Upon A Misstatement Of the Record.	3
B. The District And Appellate Courts Did Not Err In Analyzing The PLRA, 42 U.S.C. § 1997e(d)(1).	8
III. The Court of Appeals' Decision Does Not Conflict With Any Decisions Of This Court.	14

Contents

Page

IV. The Court Of Appeals Decision Does Not Conflict With The Law In Other Circuits. 16

CONCLUSION 17

TABLE OF CITED AUTHORITIES

Page

CASES:

Buckhannon Board & Care Home v. West Virginia D.H.H.R., 532 U.S. 598 (2001) 10

Burlington No. R. Co. v. Oklahoma Tax Comm., 481 U.S. 454 (1987) 9

Caminetti v. United States, 242 U.S. 470 (1917) .. 9

Garcia v. United States, 469 U.S. 70 (1984) 9

Hadix v. Johnson, 933 F. Supp. 1360 (E.D. Mich. 1996) 15

Hadix v. Johnson, 144 F.3d 925 (6th Cir. 1998) ... 15

Hernandez v. Kalinowski, 146 F.3d 196 (3d Cir. 1998) 17

Johnson v. Breedon, 280 F.3d 1308 (11th Cir. 2001) 16

Maggio v. Zeitz, 333 U.S. 56, 69 (1948) 14

Martin v. Hadix, 527 U.S. 343 (1993) 14, 15, 16

Pierce v. Underwood, 487 U.S. 552 (1988) 9

Thomas v. Arn, 474 U.S. 140 (1985) 2

Cited Authorities

	Page
United States v. Ron Pair Enters. Inc., 489 U.S. 235 (1989)	9
United States v. Rylander, 460 U.S. 752 (1983)	14
United States v. United Food, Inc., 533 U.S. 416 (2001)	3
Volk v. Gonzalez, 262 F.2d 528 (5th Cir. 2001)	16
STATUTES:	
18 U.S.C. § 3626(b)	1, 11
18 U.S.C. § 3626(b)(3)	12
18 U.S.C. § 3626(g)(9)	10
28 U.S.C. § 636(b)(1)	2
28 U.S.C. § 638(b)	4
42 U.S.C. § 1997e(d)(1)	3, 8, 9, 15, 17
42 U.S.C. § 1997e(d)(1)(A)	9, 16
42 U.S.C. § 1997e(d)(1)(A) & (B)(i) and (ii)	8
42 U.S.C. § 1997e(d)(1)(B)(ii)	*passim*
42 U.S.C. § 1997e(d)(3)	14, 15

Cited Authorities

Page

OTHER:

Rule 17-1 of the Rules for the Ninth Circuit Court of Appeals 3

Respondents respectfully request that this Court deny the Petition for Writ of Certiorari seeking review of the decision of the Court of Appeals for the Ninth Circuit.

STATEMENT OF THE CASE

The Court of Appeals for the Ninth Circuit and the Idaho District Court accurately state the pertinent facts. "The district court granted Webb partial summary judgment, finding the jail's overcrowding was unconstitutional and was a major cause of Webb's other complaints. Through court orders and partial consent decree, Webb prevailed on many of his claims." App. 5. The district court made written findings "that the post judgment fees were related to the enforcement of the court-ordered relief for violations of Webb's constitutional rights" and for enforcing and monitoring compliance with the judgment on the merits and the entry of the consent decree. App. 6.

Webb requested fees incurred in the enforcement of the court-ordered relief, including obtaining contempt and sanctions, monitoring compliance with the court-ordered relief, the application of the PLRA, and the Petitioners' motion to terminate the consent decree pursuant to 18 U.S.C. § 3626(b). App. 6-7 n.1. The district court, after a *de novo* review, adopted the Magistrate's findings that the court-ordered relief, including the Consent Decree, corrected current and ongoing constitutional violations of Webb's rights. App. 8-10. The district court awarded fees only after conducting a thorough review of the hours submitted and considering all of the objections made by the Petitioners. App. 54, 59 & 62-63.

REASONS FOR DENYING THE WRIT

I. PETITIONERS' ARGUMENTS WERE NOT RAISED BELOW AND ARE WITHOUT MERIT.

In the Ninth Circuit, Petitioners "argue[d] that the district court should not have awarded any of those attorney fees" because "Webb did not demonstrate that any constitutional violations occurred after the judgment and consent decree were entered." App. 4 & 8. Petitioners, for first time, now claim that fees for specific hours should not have been awarded because there was no constitutional violation in these areas and because the fees for enforcement were not tied to specific violations found by the district court. Petition, at 4, 5 & 11. Petitioners seek to interject issues which were litigated and resolved as part of the merits and not included in the Consent Decree. Petition, at 6-7. The Petitioners have not previously raised any objections to the fees awarded for staffing, medical care, use of cots, abortions, temperature, postage, and supplies. App. 49-51. These issues were considered with the fees awarded on the merits. Webb did not request fees on these issues and the district court did not award for these issues as part of post judgment enforcement activities.

The district court considered every written objection raised by the Petitioners. II 114-118. The Petitioners waived any further objections to specific hours by not filing a written objection to the Magistrate's recommendations pursuant to 28 U.S.C. § 636(b)(1) despite receiving clear notice in the Magistrate's Report of the requirement. II 124-133. *See Thomas v. Arn*, 474 U.S. 140, 147-148 (1985). The Petitioners never disputed the hours currently contested in the Petition in their objections. The Petitioners' current

arguments were not raised in the district court so the Court of Appeals could not consider them. Therefore, this Court should decline to hear this appeal. *See United States v. United Food, Inc.*, 533 U.S. 416-417 (2001).

II. CONTRARY TO PETITIONERS' ARGUMENT, THE DISTRICT AND APPELLATE COURTS CONDUCTED THE PROPER ANALYSIS OF THE PLRA, 42 U.S.C. § 1997e(d)(1), AND THIS CASE DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT OR OTHER CIRCUITS.

A. Petitioners' Argument Depends Upon A Misstatement Of the Record.

The Petitioners claim that fees were awarded for issues wholly unrelated to enforcing the relief ordered by the Court. The Petitioners' characterization of the record is inaccurate. The "facts" recited in the Petition bear little resemblance to the record below.[1] In 1991, inmates of a county jail brought a class action seeking injunctive and declaratory relief to alleviate unconstitutional conditions of confinement which had existed for many years. SE 15 & 46a, 55 & 63, 53-70 & 78.[2]

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1. The Petition obscures the record by the selective use of language taken out of context from the district court's pre-PLRA decisions on the merits which were made prior to the enforcement activities and were not the basis of the post judgment fee award. The fees awarded by the district court on the merits were not appealed and are not part of this appeal. App. 5.

2. Respondents' citations are to the Supplemental Excerpt, submitted under Rule 17-1 of the Rules for the Ninth Circuit Court of Appeals, and will be cited as SE, followed by page number. Respondents' Second Supplemental Excerpt will be cited as SSE, followed by page number.

On March 31, 1993, the Magistrate assigned to the case pursuant to 28 U.S.C. § 638(b) found constitutional violations. SE 15 The Magistrate held that the jail was overcrowded, inadequately staffed, and that inmates were confined in their cells and other non-living areas for too long periods of time. SE 18 The Petitioners had added four bunks and two extra cots to each six-person cell, the outdoor areas were used to house over 50 people on cots, and the visiting and library were also used as living areas for inmates. SE 29 These areas did not contain any toilets, sinks, or shower facilities and up to 62 people shared one toilet in the outdoor areas. SE 16 The Petitioners knew the jail failed to segregate prisoners and had to confine inmates without toilets or washbasins. SE 30 The overcrowding exacerbated the inadequate staffing and resulted in assaults on officers, acts of violence against other inmates, the destruction of property, and unsanitary conditions. SE 31-37 The Magistrate concluded that the "[o]vercrowded conditions have also resulted in almost a permanent lock down of inmates. . . ." SE 36 The Magistrate held "applying the Court's own separate analysis of constitutional requirements and other factors such as time out of the cells and lack of staff, I would find the Defendants in violation of the Fourteenth and Eighth Amendments." SE 40

The Magistrate placed a population cap of 175 inmates and recognized it would "have a reverse ripple effect on a number of issues raised by Plaintiffs including increased staffing, improving security, allowing recreation and jail programs." SE 40-43 and 53 "As a result of establishing a population cap the Court was placed in the position of making various decisions concerning the operation of the jail pending remodeling and completion of the new pods." I 27 The district court adopted the Magistrate's findings. SE 46 On April 29,

1994, the Magistrate issued an Interim Order, limiting cell occupancy and providing for staff supervision, security checks, law library access, food services, visitation, and jail programs. SE 65 A Second Interim Order was issued capping the population at 230, limiting the cell occupancy, requiring increased staff supervision and security checks, improvements in legal access, food service, visitation, medical services, and continuing the recreation. SE 70 The district court also issued a Declaratory Judgment finding the practice of jailing indigents who were financially unable to pay court fines was unconstitutional. SE 55 & 63 This practice was a factor causing the overcrowding.

The Petitioners totally mischaracterize the extensive nature of the constitutional violations and relief granted by the district court. The district court ordered significant relief to cure constitutional violations, including overcrowding, inadequate staffing and security, unsanitary and unhealthful conditions, violent assaults, lack of classification of inmates, and inadequate out-of-cell time. The Magistrate specifically held that "[i]t is also interesting to note, that except in their arguments now made to this Court, defendants have constantly taken the position that serious understaffing exists at the facility." SE 33 The district court granted relief due to the existence of these conditions for many years and the failure to address constitutional deficiencies. "[T]he court cannot overlook the fact that serious overcrowding started to occur in 1986 and **one must wonder why it took public officials so long to recognize the problem and then seek to alleviate the conditions with a new facility**." SE 40 Emphasis added.

The district court's finding of constitutional violations justifying relief was amply supported by the record.

The Petitioners seek to hide the numerous constitutional violations found by the district court under the label of "overcrowding." The Magistrate's findings and the district court's adoption of them established that the jail's conditions of confinement were far below minimal constitutional requirements and so inherently dangerous to the inmates' and staffs' health and safety that summary judgment was granted. Petitioners did not appeal this determination. The Magistrate's 32 page Report established the actual and shocking violations of Webb's rights. The district court issued a series of orders beginning in April 1993 and approved two years later the Consent Decree for the purpose of remedying them.

The Consent Decree granted Webb most of the relief sought in the Complaint.[3] SE 86 "The terms of the Consent Decree were voluntarily and mutually agreed upon by the parties after extensive negotiations." I 28 It was intended to resolve pending issues in order to save the time, expense, and risk of litigation of trying the issues. App. 26. The Consent Decree does not state that any of its requirements were in effect when it was signed. The Consent Decree did not affect the previous Court Orders. App. 25. The Petitioners

3. The Consent Decree dealt with the legal claims concerning all physical facilities including plumbing, lighting, ventilation, heating, cooling, and furnishings in the inmate living areas, maintenance personnel, inspections, repairs, showers, sanitation, housekeeping, eating utensils, delousing inmates, control of pests and vermin, inmate hygiene, clothing, bedding, footwear and meals, adequate staffing, staff training, inmate supervision, safety and privacy, use of force, classification, discrimination against females and non-English speaking inmates in programs and work opportunities, reading materials, the pay or stay practice, inmate communication and mail, and inmate discipline and due process. I 1-20

agreed the Consent Decree "was based upon a complete understanding of the law and constitutional obligations and their right to have the Court hear the evidence and issue legal relief if appropriate." App. 26. The Petitioners agreed to waive all defenses which may or could have been raised. App. 26. The Petitioners agreed "that the terms of the Consent Decree are workable, reasonable and can be implemented by the Defendants." App. 26. The Petitioners agreed to court enforcement and the court's continuing jurisdiction. App. 27. They also agreed that it could only be modified by the district court if there was a significant and substantial and unanticipated change in circumstances. App. 28.

The conditions and policies which existed at the time the Consent Decree was approved resulted from the court orders and years of negotiations in which the Petitioners were forced to make substantial changes in the jail, including the remodeling and construction of new dormitories. App. 63. I 28-29 & 286-287 The district court's Orders and Consent Decree resulted in a complete change in jail operations and alleviated the unconstitutional conditions which had existed for nine years. The district and appellate courts rejected the Petitioners' continual denial of the existence of these conditions and found that only after relief was granted did the Petitioners cure constitutional violations.[4]

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4. The district court specifically found that the Sheriff, based upon his own Affidavit in another state court case, knew that the overcrowded conditions and inadequate staffing had created a situation where inmates and staff were subjected to threats and acts of violence, jail property had been destroyed, and inmates refused to obey orders and generally engaged in conduct which disrupted the security of the facility, including assaults on officers and fighting among inmates but refused to make efforts to remedy the constitutional violations until forced to by the filing of Webb's Complaint. SE 34-35 & 88

The Court's Orders and Consent Decree required the Petitioners to make numerous improvements and changes in the jail's policies and operations. SE 86 There is no evidence that the Petitioners undertook any of these needed changes on a voluntary basis. The Consent Decree addressed the deficiencies challenged in the Complaint and also required the implementation and compliance with jail policy. It further provided for the district court's continuing jurisdiction for three years. SE 86 The Petitioners ignore the realities of what occurred as a result of the Webb efforts. The district court recognized that Webb's enforcement activities played a significant role in effectuating most, if not all of the changes which occurred. I 285-286

B. The District And Appellate Courts Did Not Err In Analyzing The PLRA, 42 U.S.C. § 1997e(d)(1).

The district and appellate courts correctly analyzed and applied the statutory language of § 1997e(d)(1)(A) & (B)(i) and (ii). In interpreting § 1997e(d)(1), the Court should "turn first to the language and structure" of the relevant statutes.[5]

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5. 42 U.S.C. § 1997e(d)(1) provides:

> (d) Attorney's fees
>
> (1) In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 1988 of this title, such fees shall not be awarded except to the extent that —
>
> (A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiffs rights protected by statute pursuant to

(Cont'd)

Pierce v. Underwood, 487 U.S. 552, 559 (1988). The Petitioners fail to properly interpret the actual language of § 1997e(d)(1). When the statutory language is clear on its face "'the sole function of the courts is to enforce it according to its terms.'" *United States v. Ron Pair Enters. Inc.*, 489 U.S. 235, 241 (1989) (quoting *Caminetti v. United States*, 242 U.S. 470 (1917)). If the statutory language is unambiguous the court will not resort to legislative history.[6] *Burlington No. R. Co. v. Oklahoma Tax Comm.*, 481 U.S. 454, 461 (1987).

Webb was clearly a "prevailing party" under 1997e(d)(1)(A) for fee purposes because they received court orders and a consent decree which made a material change in the relationship of the parties and created enforceable

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(Cont'd)

> which a fee may be awarded under section 1988 of this title; and
>
> (B)(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or
>
> (ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

6. The Petitioner's citation to the comments of Senator Abraham in the Congressional Record are not relevant because they do not directly address the meaning of the language of § 1997e(d)(1)(B)(ii) and it is the function of the courts not one legislator "to say what an enacted statute means." *Pierce* at 566. Petition, at 10. This Court has "eschewed reliance on the passing comments of one Member . . . and causal statements from the floor debates." *Garcia v. United States*, 469 U.S. 70, 76 (1984).

judgments on the merits. *See Buckhannon Board & Care Home v. West Virginia D.H.H.R.*, 532 U.S. 598 (2001).[7] The district court granted relief which rectified numerous unconstitutional conditions and policies. The PLRA, § 1997e(d)(1)(B)(ii), provides the court with discretion to award fees for post-judgment enforcement of the relief, including a consent decree, which was ordered to cure violations of the Webb's rights.[8] There can be no question the district court conducted the necessary examination and properly determined that the fees were incurred in proving the actual violations of Webb's rights. The district court

> 7. In addition to judgments on the merits, we have held that settlement agreements enforced through a consent decree may serve as the basis for an award of attorney's fees. *See Maher v. Gagne*, 448 U.S. 122 (1980). Although a consent decree does not always include an admission of liability by the defendant, see, *e.g.*, *id.*, at 126, n.8., it nonetheless is a court-ordered "chang[e] [in] the legal relationship between [the plaintiff] and the defendant." *Texas State Teachers Assn. v. Garland Independent School Dist.*, 489 U.S. 782, 792 (1989) (citing *Hewitt*, *supra*, at 760-761, and *Rhodes v. Stewart*, 488 U.S. 1, 3-4 (1988) (*per curiam*). These decisions, taken together, establish that enforceable judgments on the merits and court-ordered consent decrees create the "material alteration of the legal relationship of the parties" necessary to permit an award of attorney's fees. 489 U.S., at 792-793; . . . .

Buckhannon, at 605 (footnote omitted).

8. The PLRA broadly defines the term "relief" as: "all relief in any form that may be granted or approved by the court, and includes consent decrees but does not include private settlement agreements." 18 U.S.C. § 3626(g)(9).

issued extensive remedial orders and denied termination of the relief under the PLRA, 18 U.S.C. § 3626(b), because the relief continued to be necessary to correct a current and ongoing violation of Federal rights, extended no further harm necessary to correct violations of the Federal rights, and that the relief was narrowly drawn and the least intrusive means to correct the violation. I 285-287 The district court specifically rejected the Petitioners' argument that there were no constitutional violations remedied by the Consent Decree finding that "the Defendants do not address the history of legal issues prior to the Partial Consent Decree being issued". SE 100

The Court of Appeals conducted the correct legal analysis for awarding fees for the enforcement of court-ordered relief under the PLRA. The Court recognized that the language of § 1997e(d)(1)(B)(ii) "require[d] that the fees be 'directly and reasonably incurred in *enforcing* the *relief ordered* for the violation.'" Emphasis in original. App. 8. The Court properly rejected the Petitioners' argument that the statutory language required Webb to demonstrate that additional constitutional violations occurred after the judgment and consent decree were entered before being eligible to receive fees for enforcement of the existing orders. App. 8. Petitioners' argument would prohibit any fees from being awarded for enforcing a court order or a consent decree unless the court conducts an evidentiary hearing and makes a new determination on the merits that a violation has occurred. The Court of Appeals recognized that such an interpretation would render the language of section (B)(ii) "directly and reasonably incurred in *enforcing* the relief ordered for the

violation," "superfluous" and would be contrary to Congress' intent to allow fees for enforcing judgments after a finding that constitutional rights were violated.[9] App. 8-9.

> Ada County's interpretation of the PLRA would render the language of subsection (B)(ii) superfluous. Subsection (B)(ii) requires that the fees be "directly and reasonably incurred in *enforcing the relief ordered* for the violation." 42 U.S.C. § 1997e(d)(1)(B)(ii) (emphasis added). If a postjudgment fee request could only be granted if the attorney's services were directly linked to discrete constitutional violation, fees incurred "in enforcing the relief" that the court had ordered because of demonstrated previous constitutional violations, could not be awarded. To the contrary, when subsections (A) and (B) are read together, it is apparent that Congress intended that a plaintiff is entitled to fees incurred in enforcing a judgment entered upon proof that the plaintiff's constitutional rights had been violated. The PLRA defines relief as "all relief in any form that may be granted to approved by the court, and includes consent decrees." 18 U.S.C. § 3626(g)(9).

App. 8.

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9. The absurdity of the Petitioners' interpretation of subsection (B)(ii) is their contention that the district court erred in awarding fees for holding the Petitioners in contempt and obtaining sanctions because such post judgment activities are not "enforcing the relief ordered." Petition, at 11. The finding of contempt and the award of sanctions are the purest form of enforcement and clearly contemplated by § 1997e(d)(1)(B)(ii).

The Court of Appeals further recognized the district court had made the necessary factual and legal findings when it denied the Petitioners' motion to terminate the consent decree pursuant to 18 U.S.C. § 3626(b)(3) that justified the fee award including that the "'violations of Federal rights were found'" and "the district court found that the consent decree corrected violations of Webb's constitutional rights." App. 9. The district court's determination was not, as asserted by the Petitioners, based upon "one conclusory statement written by the district court" but was an expression of his agreement with its Magistrate's findings and his own *de novo* review. Petition, at 11.

The Magistrate, in recommending the award of fees, stated "[t]hus, Despite [sic] Defendants' assertion to the contrary, violations of federal rights were found." II 108 The district court held "[t]his Court has previously ruled that Plaintiffs did establish limited violations of Plaintiffs' rights regardless of the language in the Consent Decree." II 161 The Court had also previously held that

> [t]he parties and the Court were well aware of the prior court rulings in this case and the violations that had been noted by the Court. In all reality, the requisite findings were made by the prior court rulings and the stipulated relief presented by the parties. . . . Based upon the rulings by this Court and the magistrate judge prior to approval of the Partial Consent Decree, violations of Federal rights were found.

I 286 *See also* I 184 ("Plaintiffs began negotiations for a consent decree in 1991. On January 10, 1992, a first draft was presented to Defendants. This led to several drafts and

negotiations for three and one-half years. The specific terms of the consent decree negotiated by the Plaintiffs required some changes in the operation of the jail.")

The Petitioners attempt to support their arguments by quoting the partial phrases from Webb' Memoranda out of context and regarding a completely different issue. *See* Petition, at 14. The phrases were made in the context of having successfully litigated the merits and receiving substantial relief for constitutional violations. The Petitioners omit the next sentence, which read: "The Defendants' suggestion would require the Court to conduct endless evidentiary hearings on compliance issues which would defeat the purposes of settling cases". II 43. The quoted phrases regarding proving constitutional violations were referring to the argument that a party in contempt proceedings "does not have to prove a constitutional violation and contempt does not open to reconsideration the legal or factual basis of the order . . . and thus become a retrial of the original controversy." *United States v. Rylander*, 460 U.S. 752, 756 (1983) (quoting *Maggio v. Zeitz*, 333 U.S. 56, 69 (1948). This Court should reject the Petitioners' attempt to twist words and rewrite the record.

III. The Court of Appeals' Decision Does Not Conflict With Any Decisions Of This Court.

Petitioners argue that the Court of Appeals' decision conflicts with *Martin v. Hadix*, 527 U.S. 343 (1993) because it "ignored the 'substantive limits' on attorney's fees mandated by the PLRA." Petition, at 15-16. In *Martin v. Hadix* the Court held that the hourly rate cap of "§ 803(d)(3) [§ 1997e(d)(3)] limits fees with respect to postjudgment monitoring services performed after the PLRA's effective date

but it does not so limit fees for the postjudgment monitoring performed before the effective date." *Id.* at 347. The issue was whether § 1997e(d)(3) should be retroactively applied to work performed prior to its passage. *Id.* at 350-51. In *Martin* the Court did not review the fees which were awarded for enforcement of the consent decree under § 1997e(d)(1) but only reviewed the hourly rate to be applied after the passage of the PLRA. The fees awarded for the post judgment activities in *Martin* were similar to the present case. In *Martin v. Hadix* the prisoners challenged the conditions of confinement. "In 1985, the parties entered a consent decree governing sanitation, health care, fire safety, overcrowding, court access, and other aspects of prison life. The district court retained jurisdiction over the case pending substantial compliance with the decree. Plaintiffs' attorneys remain responsible for monitoring compliance with the decree." *Martin* at 366, Ginsberg, J. concurring in part and dissenting in part. In this case the district court granted remedial orders after finding constitutional violations and a Consent Decree which contained language more specific than in *Martin* which was to "assure the constitutionality" of the conditions of confinement.[10] App. 26, ¶¶ 5 & 6. The district court's decision did not conflict with *Martin v. Hadix*. The district court

10. In *Martin* the consent decree involved 12 broad areas and 44 specific areas and stated the "provisions contained herein are intended by the parties to assure the constitutionality of the conditions under which prisoners are incarcerated at SPSM-CC." *Hadix v. Johnson*, 933 F. Supp. 1360, 1360 (E.D. Mich. 1996). *See also Hadix v. Johnson*, 144 F.3d 925, 930 (6th Cir. 1998) ("though the state officials admitted no liability on the inmates claims, the decree explicitly stated that it was 'intended by the parties to assure the constitutionality of the conditions under which prisoners are incarcerated at SPSM-CC.'").

specifically addressed the Petitioners' present arguments regarding the facts, legal analysis and application of *Martin v. Hadix*.

> Plaintiffs do not dispute that section 803(d)(1) is applicable to the present fee request. However, Plaintiffs assert that Defendants have misinterpreted that provision and have mischaracterized the facts of this case as well as the Supreme Court's holding in *Hadix*. In fact, Plaintiffs argue that *Hadix* decision actually supports an award of post judgment attorney's fees in this case, albeit at a lower hourly rate than might have been awarded prior to the enactment of the PLRA. The Court agrees.

II 106-107

IV. The Court Of Appeals Decision Does Not Conflict With The Law In Other Circuits.

Petitioners contend the Court of Appeals' decision conflicts with cases decided by three other Circuit Courts. The Ninth Circuit decision does not conflict and is fully consistent with the other Circuits. The three cases are not relevant to the question presented in the Petition and are distinguishable because they did not involve post judgment enforcement of the relief under subsection (B)(ii). In *Johnson v. Breedon*, 280 F.3d 1308 (11th Cir. 2001), the Court focused solely on § 1997e(d)(1)A for fees on the merits and remanded for reconsideration the fees which were incurred against defendants and claims which were unsuccessful. *Id.* at 1326-27. In *Volk v. Gonzalez*, 262 F.2d 528, 536 (5th Cir. 2001), the Court considered whether fees-on-fees are recoverable

under § 1997e(d)(1). The Court held that fees-on-fees were recoverable and concurred in analysis of *Hernandez v. Kalinowski*, 146 F.3d 196, 199-201 (3d Cir. 1998). In *Hernandez* the Court held that "fees for time spent preparing a fee petition are included within the meaning of fees 'directly and reasonably incurred in proving an actual violation. . . .'" under § 1997e(d)(1). *Id.* at 199-200. The Court further held that "[l]itigation of fee petition often becomes necessary to enforce that right . . . [and] § 1997e(d)(1) of the PLRA must be interpreted to include 'fees on fees.'" *Id.* at 200-201. The Circuit Court decisions do not address the interpretation and application of § 1997e(d)(1)(B)(ii) for post judgment enforcement of relief. Rather than conflicting with the Ninth Circuit's decision, these Courts support it.

CONCLUSION

For the reasons discussed herein, the Petition should be denied.

Respectfully submitted,

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